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Chief Executive Officer

June 24, 2016

To: Supervisor Hilda L. Solis, Chair
Supervisor Mark Ridley-Thomas
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From: Sachi A. Hamai
Chief Executive Officer

EVALUATE ALL RELEVANT FEDERAL, STATE AND COUNTY CODES THAT SERVE AS A BARRIER TO PROVIDING TREATMENT FOR HOMELESS INDIVIDUALS WHO REFUSE SERVICES (ITEM 59A, AGENDA OF MAY 17, 2016)

On May 17, 2016, the Board of Supervisors (Board) instructed the Chief Executive Officer (CEO) to work with County Counsel and the Health Agency Director to evaluate relevant State and Federal Laws, as well as County codes and ordinances that serve as a barrier to providing treatment to homeless individuals who refuse services as well as an analysis of the history related to the issues; and report back to the Board in 30 days with an assessment and any recommendations for Board action to seek legislation or modifications to County codes or ordinances.

Overview of Current Treatment Services for Homeless Adults

The County has a robust system of health, mental health, and substance abuse services for evaluating and providing treatment to homeless individuals both voluntarily and involuntarily. Homelessness is a complex social issue and coercive treatment is generally not permitted or recommended, unless warranted under a specific set of circumstances.

Permanent Supportive Housing (PSH) models that provide chronically homeless individuals with housing and supportive services such as case management and applicable health, mental health, and substance use disorder services generally follow a "Housing First" policy. Housing First is an approach that provides individuals experiencing homelessness with permanent housing as quickly as possible and then wraps voluntary supportive services around the individual as needed. This approach prioritizes client choice in both housing selection and service participation, as it does not

precondition placement into housing on the acceptance of treatment. The Housing First model is widely accepted as a best practice within the homeless housing field. A central tenet of the Housing First approach is that social services to enhance individual well-being can be most effective when people are housed.

Therapeutic models, such as Harm Reduction, for individuals who are unable or unwilling to discontinue their substance abuse, focus on the prevention of harm rather than on the prevention of the substance use itself. Harm Reduction complements housing interventions such as Housing First, by facilitating the housing of chronically homeless individuals without preconditions that would deter them from entering housing and eventually accessing supportive services.

Engaging homeless individuals on the street and through repeated efforts by multi-disciplinary outreach and engagement teams, which gradually build trust and rapport with that homeless individual over a period of time, is a necessary first step in transitioning that individual from the street into housing. Once individuals are housed, homeless case managers and service providers can begin addressing the root causes that led to the individual's homelessness, including the provision of health, mental health and substance use disorder treatment.

Homeless outreach and engagement teams operated by the Departments of Health Services (DHS) and Mental Health (DMH), with staff support from the Department of Public Health (DPH), are having success in moving homeless individuals from the street into housing using these approaches, which helps to facilitate the acceptance of treatment, often after repeated contacts.

The attachment details the legal requirements regarding involuntary medical, mental health, and/or substance use disorder treatment for residents of Los Angeles County.

Additional Options to Provide Treatment to Homeless Adults

The following programs have been recently implemented, are currently being designed, or could be explored further for potential legislation:

- The Office of Diversion and Reentry (ODR) will be developing a comprehensive and cohesive system of integrated mental health, physical health and substance use disorder treatment for persons who are: (1) re-directed from the criminal justice system or are re-entering the community after incarceration; and (2) who have a mental illness and/or substance use disorder. Criteria as to who will be eligible to participate in the Diversion and Reentry program are being developed by the ODR and Permanent Steering Committee; submitting to necessary treatment will undoubtedly be required as a condition of eligibility.

- DMH, in collaboration with DPH and DHS, has been working with the California Department of Healthcare Services to identify facilities that could be designated under Welfare and Institutions code (WIC) section 5170 to detain inebriated individuals that meet probable cause for danger to self, danger to others, or grave disability. Currently, DPH does not operate or contract with any service providers with capacity to detain any individuals in a locked treatment facility. (Please see Attachment for a description of the authority granted by WIC section 5170.)

- Many states have passed legislation authorizing the involuntary commitment of individuals to in-patient substance abuse programs. These laws are typically referred to as "Casey's Law", as they are named after Casey Wethington who died at the age of 22 due to a heroin overdose. Casey's parents spearheaded the effort to pass the legislation in Kentucky, as their efforts to get their son into substance abuse treatment were unsuccessful since Casey was an adult and did not consent to treatment. Currently, 38 states allow some form of involuntary substance abuse treatment that is independent of any kind of criminal involvement. Each state has established its own criteria for who may petition for the commitment, the required extent of substance abuse disorder, and the criteria for involuntary commitment. The treatment options available under the various laws can range from detoxification to intensive treatment through recovery. The length of time during which a person can be involuntarily required to participate in treatment also varies widely among states. "Casey's Law" legislation could be pursued in California.

If you have any questions, please contact Phil Ansell, Director of the Homeless Initiative, at (213) 974-1752, or at pansell@ceo.lacounty.gov.

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PA:LB:ef

Attachment

c: Executive Office, Board of Supervisors
County Counsel
Health Services
Mental Health
Public Health

Involuntary Treatment: Existing Legal Framework

Homeless individuals have the constitutional right to be homeless, as homelessness by choice is legal. The United States Constitution and its Bill of Rights protect people's civil liberties, which allow them to live their own lives according to their own choices, including one's choice to refuse physical, mental health and/or substance abuse treatment and one's choice to be homeless. The Due Process Clause of the 14th Amendment to the Constitution prohibits any government action that deprives any person of life, liberty, or property without due process of law.

The Equal Protection Clause of the 14th Amendment prohibits states from denying any person within their jurisdiction the equal protection of the laws. In other words, the laws of a state must treat an individual in the same manner as others in similar conditions and circumstances. Generally, the Equal Protection Clause prohibits states from passing laws that benefit only certain groups of people or negatively impact only a certain category/classification/group of persons, unless the law is narrowly tailored to further a legitimate governmental purpose. Therefore, the Equal Protection Clause prevents government from imposing restrictions on liberty that are arbitrary, or draw distinctions between persons (such as homeless versus non-homeless) in a manner that serves no constitutionally legitimate end.

1. Medical Treatment

State and federal law recognize that every adult with the capacity to make health care decisions has the fundamental right of self-determination over his or her body and property. A competent adult has a constitutional and common law right to refuse even necessary medical treatment and, generally, an individual cannot be forced to submit to mental health treatment, except under a set of specifically-defined conditions. The right of a patient to refuse treatment is based upon several constitutional protections:

- The 14th Amendment's protection of liberty;
- The more broadly interpreted right to privacy;
- The 8th Amendment's protection against cruel and unusual punishment; and
- The 1st Amendment's protection of freedom of religion (e.g. the right of Jehovah's Witnesses to refuse blood transfusions).

There is a long line of U.S. Supreme Court cases that recognize and reaffirm that the 14th Amendment Due Process Clause protects one's liberty interest and right to refuse unwanted medical treatment. There is also the well-established common law doctrine of "informed consent" which prohibits, absent an emergency situation, the provision of medical treatment to an individual without his/her informed consent. The doctrine of informed consent necessarily includes its corollary, the right to withhold consent and refuse treatment. California Health and Safety Code section 1262.6 (a)(3) expressly permits patients to refuse treatment upon admission to a hospital.

2. Mental Health Treatment

As discussed above, while every individual has the Constitutional right to refuse medical treatment, courts have consistently held that the right is not absolute and may have to yield to compelling state interests. For example, states have a compelling interest in the protection of the public from those who present a danger to themselves or others. Accordingly, in the exercise of its police power interest in preventing violence and maintaining order, a state may mandate mental health treatment of such individuals over their objection. Additionally, the state may rely on its "parens patriae" power (power of the state to act as guardian for those who are unable to care for themselves) to provide care to its citizens who are unable to care for themselves because of mental illness.

California has enacted laws based upon its police powers and the doctrine of "parens patriae", whereby certain classes of mentally ill people (ie. those deemed not competent) may be involuntarily committed for mental health treatment. These laws authorize mental health treatment services to be provided to an individual without their consent when: 1) they are determined to be a 'danger to self or others' or gravely disabled as defined pursuant to the Lanterman-Petris Short Act; or 2) they are the subject of court-ordered Assisted Outpatient Treatment (Laura's Law).

A. The Lanterman-Petris-Short (LPS) Act, Welfare and Institutions Code 5000 et seq.

In California, the main law governing mental health evaluation and treatment is the Lanterman-Petris-Short (LPS) Act [Welfare and Institutions Code Section 5000 et seq.]. The law was enacted in 1967 and went into full effect on July 1, 1972, and has been amended many times since then. The law sets forth the procedures that law enforcement and health care providers must follow prior to involuntarily detaining a person for mental health evaluation and treatment. The LPS Act also sets forth the rights of mental health clients, whether voluntarily or involuntarily admitted, and contains procedural requirements that must be followed prior to providing specified types of treatment to mental health clients.

WIC section 5150 et seq sets forth the authority and procedure by which law enforcement and other qualified professionals may temporarily take into custody and transport to a hospital, urgent care center, or a similar facility approved by the County for involuntary treatment, individuals who are a danger to self, danger to others, or are gravely disabled as the result of a mental illness. These are commonly known as "5150 holds". If the person is admitted, the facility may detain the person for up to 72 hours.

WIC Section 5250 authorizes up to an additional 14 days for evaluation and treatment, if specific criteria are determined to exist by the treatment provider. If at the end of the 14- day hold, the person continues to be in need of care due to a grave disability, a petition for an additional 30-day commitment may be filed with the court (WIC 5270).

WIC 5350 et seq. establishes the process by which the Public Guardian can petition the court for a temporary conservatorship for a person alleged to be gravely disabled due to a mental illness. If granted, the temporary conservatorship can last for a period of up to six months. Thereafter, if a person continues to be gravely disabled due to mental illness, a petition for permanent conservatorship may be established and the conservator may petition the Court for reappointment each year. Once appointed, the conservator will have the legal power to make decisions regarding placement and to require the conservatee to receive mental health treatment and psychotropic medications, if warranted.

B. Assisted Outpatient Treatment (Laura's Law) – Welfare and Institutions Code 5345 et seq.

Assisted Outpatient Treatment (AOT), also known as Laura's Law (AB 1421), was initiated following the 2001 killing of Laura Wilcox by an individual suffering from severe mental illness. AB 1421 allows counties to pursue court-ordered outpatient treatment for people with serious mental illness, while ensuring the individual's due process rights are recognized. AOT has been shown to be effective in reducing re-hospitalizations, incarcerations, victimizations, episodes of violence, and homelessness.

On July 15, 2014, the Board voted to implement Laura's Law countywide as a tool for making treatment possible for individuals with severe mental illness who are too ill to seek help for themselves. Laura's Law authorizes the Director of DMH to petition for court-ordered outpatient treatment for an individual who meets specified criteria. Implementation of Laura's Law countywide started in May 2015 and allows DMH to serve seriously mentally ill persons at substantial risk of deterioration and/or detention under WIC 5150 as a direct result of poor psychiatric treatment compliance.

WIC 5345 et seq sets forth the process and criteria for filing a petition seeking a court order to obtain assisted outpatient mental health treatment for an individual. Such treatment may be ordered if, subject to due process protections, the court finds by clear and convincing evidence that the subject individual meets all the statutory eligibility criteria.

- Only certain persons may request the filing of a petition by DMH. They include the county behavioral health director, or designee, and the parent, spouse, adult sibling or child of the person who is the subject of the petition. Criminal justice personnel such as a peace officer, parole officer, or probation officer may request that DMH file a petition.

- The petitioner must establish that all enumerated statutory criteria have been met, including:
  - The person was offered the opportunity to participate in services on a voluntary basis;
  - The mental illness has, at least twice within the last 36 months, been a substantial factor in necessitating hospitalization (including treatment in a

correctional mental health unit) or the person's mental illness has resulted in one or more acts of serious and violent behavior toward self or others within the last 48 months;
  - The person's condition is substantially deteriorating; and
  - Assisted outpatient treatment is needed to prevent relapse or deterioration that would result in grave disability or serious harm to self or to others.

- The petition must be supported by a declaration from an examining clinician who has personally examined the person within the preceding 10 days or declaration that efforts to examine the client have been made and the person is believed to meet the criteria.

- The person has a right to a hearing on the petition and to appointed counsel.

If the court grants the petition and orders outpatient treatment, it may only be for an initial period not to exceed six months, with reviews conducted at 60-day intervals, and for further outpatient treatment not to exceed another six months (180 days). Additionally, the order cannot authorize involuntary medication.

C. Involuntary Medication - Welfare and Institutions Code Sections 5332 -5334

Under current law, the standard of proof required to detain and treat a psychiatric patient is significantly lower than the standard required to medicate involuntarily. Thus, there will be patients who are found detainable at probable cause hearings, but not subject to the doctor's desired form of treatment (i.e. medication) unless court ordered to do so. An involuntary medication court order may be sought by a treatment provider in a "Medication Capacity or Riese Hearing (WIC 5332-5334)", which is a facility-based hearing to determine if a person on any of the LPS holds has the capacity to refuse psychiatric medications. To safeguard the Constitutional protections of self-determination and due process, the legislature and the Courts have placed substantial burdens on the doctor and the treating facility who desire to medicate a psychiatric patient against the patient's will in a non-emergency situation.

Substantive and procedural safeguards include:

- Hearings for persons on temporary conservatorship must be requested through Public Guardian/County Counsel and must be scheduled within 72 hours;
- Notice must be provided to the person subject to the hearing;
- The decision of the Mental Health Hearing Referee may be appealed to the Court by either the patient or the treating physician; and
- The current treating physician must present the evidence at both the facility-based hearing and any subsequent Court hearing.

3. Substance Use Disorder Treatment

Just as with physical and mental health treatment, individuals have the Constitutional right to refuse substance use disorder treatment. No law in California authorizes the involuntary commitment of individuals into a substance use disorder treatment program either on an inpatient or outpatient basis, with the exception of time-limited treatment of individuals who are gravely disabled as a result of inebriation or the use of controlled substances or a danger to self or others. In all other circumstances, substance use disorder services may only be provided to persons who: 1) consent to treatment, or 2) are subject to court ordered participation in substance use disorder treatment.

A. Lanterman-Petris-Short (LPS) Act – Welfare and Institutions Code Section 5170 et seq.

The LPS Act authorizes evaluation and time-limited treatment of individuals, who, as a result of inebriation, are a danger to self, danger to others or are gravely disabled. WIC 5170 authorizes law enforcement and others designated by the County to take a person into civil protective custody and transport the person to certain designated facilities for the treatment and evaluation of inebriates. County Counsel is currently reviewing legislative history for purposes of clarifying legislative intent as to whether "inebriation" refers solely to alcohol or includes a broader range of inebriating substances.

In order for a County to effectuate the statute authorizing such treatment, the County's Board of Supervisors must adopt a resolution stating that suitable facilities exist within the County for the care and treatment of inebriates and persons impaired by chronic alcoholism. Specific requirements and limitations for such programs include:

- "Reasonable cause" standard for determination of inebriation;
- The person has a right to make two phone calls;
- If the person is admitted, the facility may detain the person for evaluation and detoxification treatment for up to 72 hours; and
- Persons who are a danger to self or to others or gravely disabled as a result of chronic alcoholism may be certified for 14 days of additional treatment, if specific criteria set forth in WIC 5270 are determined to exist by the treatment provider.

B. Lanterman-Petris-Short (LPS) Act – Welfare and Institutions Code Section 5340 et seq.

WIC section 5340 et seq. authorizes involuntary detention, evaluation and treatment of a person who is a danger to self or others, or who is gravely disabled, as a result of the use of controlled substances. The procedural requirements are the same as those applicable for involuntary commitments for mental health treatment (i.e. 5150 et seq), except that any custody, evaluation or treatment, and all proceedings must only be related to and concerned with the problem of the person's use of controlled substances and persons subject to these provisions are not to be considered mentally disordered.

The LPS Act provides a comprehensive statutory scheme for handling involuntary civil commitment of individuals and treatment in the State of California.

The LPS regulations discussed above and programs such as Laura's Law/AOT provide due process protections when involuntary detention and treatment of homeless individuals, as well as the populace in general, is warranted. Any local regulation concerning these issues would need to be consistent with the provisions of the LPS Act.